

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE REPUBLIC OF IRAQ, including as  
PARENS PATRIAE on behalf of the  
CITIZENS of the REPUBLIC OF IRAQ,

Plaintiff,

-against-

ABB AG, et al.,

Defendants.

8 Civ. 5951 (SHS)

ORDER

SIDNEY H. STEIN, U.S. District Judge.

The Court will hold argument on the pending motion to dismiss on October 26, 2012 at 2:30pm. Each party should be prepared to set forth the reasons why it should prevail and should address at a minimum the following points:

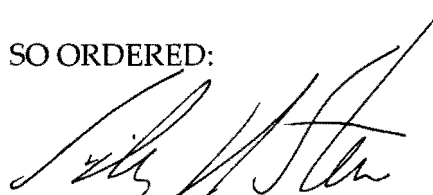
- What law should the Court use to determine whether or not to attribute to the Republic of Iraq actions taken by the Hussein Regime? What role do (1) the Restatement (Third) of the Foreign Relations Law of the United States § 207 and (2) the International Law Commission's Responsibility of States for Internationally Wrongful Acts, annexed to U.N. General Assembly Resolution 56/83 (December 2001), play in the determination of that question?
- Does the political question doctrine prevent this Court from determining whether or not to attribute to the Republic of Iraq actions taken by the Hussein Regime?
- What significance does the legal relationship between the Hussein Regime and the Republic of Iraq have for the purposes of assessing the Republic of Iraq's Article III standing?
- The Court currently believes that under Second Circuit precedent the RICO statute, 18 U.S.C. § 1961 *et seq.*, does not apply extraterritorially. See *Norex Petroleum Ltd. v. Access Indus., Inc.*, 631 F.3d 29 (2d Cir. 2010). In deciding whether the application of the

RICO statute to the allegations of the Complaint is extraterritorial, is it the location of the alleged enterprise or the location of the pattern of racketeering activity that is determinative?

- Does the Robinson-Patman Act, 15 U.S.C. § 13, apply extraterritorially within the meaning of *Morrison v. Nat'l Austl. Bank Ltd.*, 130 S. Ct. 2869 (2010)?
- What is the Republic of Iraq's alleged anti-trust injury?
- Does the federal common law or New York common law govern this Court's analysis of the Republic of Iraq's common law claims?
- Is *in pari delicto* a defense to civil RICO claims? Is it a defense to Robinson-Patman Act claims?
- What body of law gives rise to the fiduciary duties the Complaint alleges were owed by the Hussein Regime to the Iraqi people? What effect, if any, does the act of state doctrine have on the Court's analysis of the aiding and abetting breach of fiduciary duty claim?
- What is the contract that underlies the Republic of Iraq's breach of contract claim?

Dated: New York, New York  
October 12, 2012

SO ORDERED:

  
\_\_\_\_\_  
Sidney H. Stein, U.S.D.J.